

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MELISSA DOVALA,

Petitioner,

v.

GININE TIM, WARDEN,

Respondent.

) **Case No. 1:16 CV 2511**

)

) **Judge Dan Aaron Polster**

)

) **MEMORANDUM OF OPINION**

) **and**

) **ORDER OF TRANSFER**

)

)

This case is before the Court on the Report and Recommendation of Magistrate Judge James R. Knepp, II (“R&R”). (**Doc #: 13.**) Magistrate Judge Knepp recommends that the Court grant Respondent’s Motion to Transfer Habeas Petition to the Sixth Circuit Court of Appeals for Petitioner Melissa Dovala to request permission to proceed with a second or successive petition (“Motion”). (**Doc #: 7.**) Dovala has filed Objections to the Magistrate’s Report and Recommendations, and Respondent has filed a Response to the Objections. (Respectively, (Doc ##: 16, 17.)

As noted by Respondent, Dovala again argues that she should get one meaningful opportunity for postconviction review of her ineffective assistance of counsel claim, citing *Stewart v. Martinez-Villareal*, 523, U.S. 637 (1998). The Magistrate Judge already addressed this claim. The Magistrate Judge not only found that *Stewart* was distinguishable, but he concluded that this claim was ripe, albeit unexhausted, at the time she filed her first habeas

petition. In other words, her claim was not premature because the factual predicate for the claim was in existence at the time she filed her first habeas petition. The Court has reviewed the record and agrees. Because Dovala chose to proceed with the mixed petition, the present petition is second or successive and, as such, should be transferred to the United States Court of Appeals for the Sixth Circuit. 28 U.S.C. § 2244(b)(3); *Burton v. Stewart*, 549 U.S. 147, 154 (2007). For these reasons, the Court **overrules** the Objections (**Doc #: 16**), **adopts** the R&R (**Doc #: 13**), and **grants** the Motion to Transfer (**Doc #: 7**.)

Accordingly, the Court hereby **DIRECTS** the Clerk of Court to **transfer** this case to the United States Court of Appeals for the Sixth Circuit.

IT IS SO ORDERED.

/s/ Dan Aaron Polster September 22, 2017
Dan Aaron Polster
United States District Judge